

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HAKEEM EL BEY,

Defendant.

No. 14-CR-00447

Chicago, Illinois

April 9, 2018

1:30 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS - PRETRIAL CONFERENCE
BEFORE THE HONORABLE JUDGE EDMOND E. CHANG

APPEARANCES:

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1 **Court Reporter: FEDERAL OFFICIAL COURT REPORTER**
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01:27:45 1 (Whereupon, the following proceedings were had in
2 open court.)

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THE COURT REPORTER: All rise.

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6

This court is now in session before the Honorable
Judge Edmond E. Chang.

7

Case Number 14 CR 447, USA versus Hakeem El Bey.

01:36:57

8

THE COURT: Okay.

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Let's do appearances for the record, please.

01:36:57

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MR. HOTALING: Good afternoon, Your Honor, Chris

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Hotaling for the United States.

01:37:04

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DEFENDANT BEY: Good afternoon, Judge. Bey, comma,

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13

Hakeem El, doing business as Hakeem El Bey.

01:37:15

14

MR. FUENTES: Judge, Gabriel Fuentes, appointed

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15

standby counsel. With me is Philip Kovoov from Jenner & Block

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who with the Court's permission may accompany and observe some

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of the proceedings as we get into the trial. If that's okay.

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And of course if the Court wants Mr. Kovoov to enter

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an appearance we can do that too.

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THE COURT: Is the idea that he will be just watching

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or actually be interacting with Mr. Bey?

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MR. FUENTES: I think he will interact more with me

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than Mr. El Bey. It's to give Mr. Kovoov a sense of how

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trials are done in the district. He is a veteran of the New

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York County DA's office, the Milwaukee County DA's office.

01:37:50 1 Lots of trial experience, but none here yet.

01:37:54 2 THE COURT: Yes, if you are going to discuss the case
01:37:58 3 with him, you probably should file on appearance, but let me
01:38:11 4 ask Mr. Bey first.

01:38:13 5 Can Mr. Kovoor file an appearance and help
01:38:17 6 Mr. Fuentes and you out?

01:38:17 7 DEFENDANT BEY: I don't mind.

01:38:18 8 THE COURT: Then please go ahead and file an
01:38:42 9 appearance.

01:38:42 10 Okay. All right.

01:38:49 11 So I had entered an order on Friday trying to take
01:38:55 12 care of the motions in limine that I could and then flag a
01:38:58 13 couple of issues.

01:38:58 14 Mr. Bey, did you get a copy of that?

01:39:02 15 DEFENDANT BEY: No, I didn't.

01:39:03 16 THE COURT: I -- I believe we tried to email it to
01:39:07 17 you, and then the courtroom deputy got in touch with you to
01:39:10 18 get an email address. Do you remember that?

01:39:10 19 DEFENDANT BEY: She called me and said she would mail
01:39:13 20 it and email me, and I got neither one.

01:39:17 21 THE COURT: The mailing I am not surprised, but the
01:39:20 22 email should have gone out.

01:39:39 23 We will hand you a copy. Okay. So Mr. Bey, rather
01:39:45 24 than have you sit there and read it, I was going to go through
01:39:49 25 it anyway, we will just go step-by-step and you can follow

01:39:53 1 along in writing, okay?

01:39:55 2 DEFENDANT BEY: Uh-huh.

01:39:56 3 THE COURT: So the first motion that the government
01:39:58 4 had filed had to do with more trial procedure and opening
01:40:03 5 statements and closing arguments, and so for this part of the
01:40:09 6 motion, on the one hand I wanted to make clear that opening
01:40:13 7 statements are supposed to be previews of evidence, like the
01:40:17 8 facts in the case, and so you are familiar with that format
01:40:21 9 for opening statements, right?

01:40:24 10 DEFENDANT BEY: Yes, I am.

01:40:25 11 THE COURT: Okay.

01:40:26 12 If you do genuinely believe in good faith that
01:40:30 13 certain evidence is going to come out, including from your own
01:40:34 14 potential testimony, which is entirely up to you, then you can
01:40:38 15 mention those facts in opening.

01:40:41 16 DEFENDANT BEY: Okay.

01:40:41 17 Judge, can I ask you a question first?

01:40:43 18 THE COURT: Sure.

01:40:44 19 DEFENDANT BEY: I never did get a ruling on my
01:40:46 20 jurisdictional challenge?

01:40:48 21 THE COURT: Yes, it is actually in this order.

01:40:51 22 If you want we can skip to it, it is at the end. It
01:41:01 23 is Page 7.

01:41:02 24 DEFENDANT BEY: Okay.

01:41:03 25 THE COURT: I think it is pretty well established,

01:41:05 1 Mr. Bey, that this Court does have jurisdiction, and the
01:41:09 2 arguments that you have raised have been rejected before, and
01:41:12 3 so you have now preserved this issue if you want to raise it
01:41:18 4 with the Court of Appeals upstairs, but this Court does have
01:41:21 5 jurisdiction.

01:41:22 6 DEFENDANT BEY: Okay.

01:41:23 7 THE COURT: And you can read it more closely later if
01:41:30 8 you want.

01:41:30 9 DEFENDANT BEY: Before we get going, I need to -- I
01:41:34 10 just need five minutes to make some statements.

01:41:37 11 Would that be okay?

01:41:40 12 THE COURT: Five minutes?

01:41:41 13 DEFENDANT BEY: Yes.

01:41:42 14 THE COURT: Are they going to be a repeat of what you
01:41:44 15 have put down in writing, Mr. Bey?

01:41:48 16 DEFENDANT BEY: No, not a repeat, just some simple
01:41:53 17 questions, and then I want to read a little statement, and
01:41:57 18 then I will be done.

01:41:58 19 THE COURT: Questions I am happy to answer.

01:42:01 20 Go ahead.

01:42:02 21 DEFENDANT BEY: First question is, does the Court
01:42:07 22 disclaim the trust?

01:42:08 23 THE COURT: The trusts that are referred to in the
01:42:11 24 indictment, that will be up to the jury to decide whether the
01:42:15 25 statements made on those forms with regard to the trust are --

01:42:18 1 DEFENDANT BEY: I am not talking about the trust with
01:42:23 2 the jury, I'm talking about the trust that the prosecutors,
01:42:26 3 they brought me in here dealing with a trust. Anything with a
01:42:28 4 trust is equity.

01:42:28 5 I just want to -- I never did get a straight answer
01:42:32 6 from you was this in equity court. Is this Court of equity?

01:42:36 7 THE COURT: This Court was created by statute --

01:42:41 8 DEFENDANT BEY: I understand but --

01:42:42 9 THE COURT: Just hold on. I will get out the
01:42:45 10 decision, then you can make a comment.

01:42:48 11 DEFENDANT BEY: Okay.

01:42:48 12 THE COURT: Then under Title 18, United States Code
01:42:48 13 3231, the Court has jurisdiction over any charged offenses
01:42:56 14 under the Federal Criminal Code.

01:43:01 15 So go ahead.

01:43:01 16 DEFENDANT BEY: Then I was going to, again, ask the
01:43:03 17 prosecutor, and then I was going to say, let the record show
01:43:08 18 that both the Court and the prosecutor are admitting the
01:43:11 19 trust, because you are not denying it.

01:43:16 20 And then I want to say that let the record show --

01:43:18 21 THE COURT REPORTER: Excuse me.

01:43:19 22 Can you start that second one again? I didn't hear
01:43:21 23 you.

01:43:21 24 THE COURT: Yes, and slow your pace down because you
01:43:23 25 are reading.

01:43:24 1 DEFENDANT BEY: The second one is, does the
01:43:27 2 prosecutor admit to the trust?

01:43:30 3 Then the third is let the record show that both the
01:43:33 4 Court and the prosecutor admits the trust.

01:43:36 5 The fourth one was, let the record show that the
01:43:41 6 judge by his confession and avoidance acknowledges the trust.

01:43:46 7 And the fifth one, I accept your Constitutional oath
01:43:51 8 pursuant to Article 6, Section 3, because this is about
01:43:58 9 equity.

01:43:59 10 And then the last thing I want to say is this, and
01:44:02 11 then I am done and we can start. I just want to state that I
01:44:05 12 am the grantor, beneficiary of the trust, now established.
01:44:09 13 Trust is special matter in a court of equity. This is not a
01:44:13 14 court of equity. I demand to be seen in a court of equity so
01:44:17 15 my rights of a trust are acknowledged.

01:44:21 16 THE COURT: Okay. Thank you.

01:44:23 17 As I said, the jurisdiction of this Court is secure
01:44:27 18 regardless of whether you constitute a trust or not.

01:44:35 19 DEFENDANT BEY: Okay.

01:44:35 20 THE COURT: So I think we are ready to proceed.

01:44:39 21 DEFENDANT BEY: We can proceed now.

01:44:40 22 THE COURT: Okay.

01:44:46 23 I was discussing opening statements and the format
01:44:48 24 for opening statements, and with regard to the length, the
01:44:50 25 joint pre-trial statement says that both sides would limit

01:44:56 1 themselves to 20 minutes, so I want you to be aware that there
01:44:59 2 will be a 20-minute limit on opening statements.

01:45:03 3 DEFENDANT BEY: (Nodding head.)

01:45:04 4 Okay.

01:45:05 5 THE COURT: And then on closing arguments both sides
01:45:07 6 agreed in the joint pretrial statement to 45 minutes for the
01:45:13 7 limit, neither side has to take all that time, it is just a
01:45:15 8 maximum.

01:45:16 9 Okay?

01:45:17 10 DEFENDANT BEY: (Nodding head.)

01:45:18 11 THE COURT: Can you just say yes or no for the
01:45:21 12 record?

01:45:21 13 DEFENDANT BEY: Yes.

01:45:21 14 THE COURT: And then on the 45 minutes, I just want
01:45:24 15 to make sure the government understands that that is the total
01:45:27 16 allotment you have for both the opening, close, and the
01:45:30 17 rebuttal, and the only limitation I put on the split of that
01:45:34 18 time is that the rebuttal cannot exceed the time expended on
01:45:40 19 the opening close.

01:45:42 20 MR. HOTALING: The government understands.

01:45:43 21 THE COURT: Okay.

01:45:45 22 MR. HOTALING: It will be the total 45 minutes, and
01:45:49 23 the opening close -- the rebuttal cannot be longer than the
01:45:53 24 opening close?

01:45:56 25 THE COURT: Right.

01:45:56 1 MR. HOTALING: The government understands.

01:45:57 2 THE COURT: All right.

01:45:59 3 Then with respect to -- okay. I don't remember if
01:46:02 4 this happened at the first trial, but in your opening
01:46:11 5 statement, Mr. Bey, and also your closing argument, you don't
01:46:15 6 have to, you may want to, it's up to you, but you do not have
01:46:17 7 to refer to yourself in the third person, that is to say --
01:46:21 8 you can just say -- let's say in closing arguments, the
01:46:24 9 evidence supported that you signed something.

01:46:36 10 You are allowed say to the jury, I signed the
01:46:38 11 document.

01:46:39 12 Do you understand?

01:46:40 13 DEFENDANT BEY: Yes.

01:46:41 14 THE COURT: All right.

01:46:42 15 Then the only other --

01:46:43 16 DEFENDANT BEY: Wait a minute. I am going to ask a
01:46:48 17 question just on what you're saying.

01:46:48 18 You say, the evidence has shown, so they have proof,
01:46:52 19 they have my signature on the document?

01:46:55 20 THE COURT: No, I was giving you an example.

01:46:57 21 DEFENDANT BEY: Okay. Okay.

01:46:59 22 THE COURT: I'm not making a finding one way or the
01:46:59 23 other. Just wanted to give you a really easy example to
01:47:02 24 understand that I don't have a problem with you referring to
01:47:06 25 yourself and saying that "I did something" or "I took some

01:47:10 1 step" or "I spoke to someone," that is not a problem.

01:47:14 2 All right?

01:47:15 3 MR. HOTALING: And Judge, just for clarification, as
01:47:18 4 opposed to saying, "Mr. El Bey," you saying "Mr. El Bey signed
01:47:23 5 the document," I think he is saying you can talk in the first
01:47:27 6 person.

01:47:27 7 DEFENDANT BEY: (Laughter.)

01:47:29 8 THE COURT: I am not sure what restriction was placed
01:47:33 9 on you the first time around.

01:47:34 10 I just want you to know you can refer to yourself in
01:47:41 11 the first person.

01:47:43 12 DEFENDANT BEY: I can only refer to myself one kind
01:47:46 13 of way. I don't understand what you are saying.

01:47:48 14 THE COURT: Then that is fine. That is perfectly
01:47:50 15 fine.

01:47:51 16 DEFENDANT BEY: Okay. (Laughter.)

01:47:52 17 THE COURT: With respect to -- oh, okay.

01:47:55 18 So during questioning, when someone is testifying up
01:47:59 19 here and you are questioning them, remember that you always
01:48:03 20 have to pose questions to the witnesses, and what you can't do
01:48:14 21 is turn to the jury and make statements directly to the jury,
01:48:18 22 as if you were testifying during questioning of a witness.

01:48:21 23 Does that make sense?

01:48:22 24 DEFENDANT BEY: Yes.

01:48:23 25 THE COURT: You have the absolute right to testify on

01:48:25 1 your own behalf, and then of course you can take the witness
01:48:28 2 stand and you can testify right to the jury, it is just that
01:48:33 3 when you question a witness, don't turn and talk to the jury
01:48:37 4 directly. All right?

01:48:37 5 DEFENDANT BEY: Okay.

01:48:39 6 THE COURT: Okay.

01:48:50 7 We have gone over the time length. We will go over
01:48:51 8 the exhibits in a minute, Mr. Bey, but if during trial it
01:48:56 9 occurs to you that you want to try to introduce some other
01:48:59 10 exhibit that you have not yet identified, just ask for a side
01:49:03 11 bar and we will talk about it at a side bar, okay?

01:49:09 12 DEFENDANT BEY: Well, see, what happened last trial
01:49:12 13 was I did that, and then the judge, they had rest their case,
01:49:18 14 and then the Judge opened their case up the next day when it
01:49:22 15 was my turn, and allowed them to go before me, and they used
01:49:27 16 what I brought in.

01:49:28 17 So what I am saying to you is this:

01:49:30 18 You know, I am leery on that, because just what
01:49:33 19 happened with the first case. Every time they want to see
01:49:36 20 what I am saying, I show it to them, and then he opened the
01:49:40 21 case back up for them to use what I brought in.

01:49:44 22 So what I was going to present to them I couldn't
01:49:47 23 present, because they had already presented.

01:50:00 24 THE COURT: Okay. A couple things on that.

01:50:01 25 First, I do think that the trial will go more

01:50:04 1 smoothly if a new exhibit -- and this goes for the government
01:50:08 2 too, if they think of some exhibit that they haven't
01:50:12 3 identified yet, we have to talk about it first --

01:50:16 4 DEFENDANT BEY: I want to get this clear, when they
01:50:18 5 rest their case, then their case is rested, right?

01:50:20 6 THE COURT: The general rule is --

01:50:22 7 DEFENDANT BEY: You know what? I never get a
01:50:24 8 straight answer from anyone when I ask.

01:50:26 9 THE COURT: That is because sometimes the law has a
01:50:28 10 general rule with exceptions.

01:50:30 11 So, generally yes, when the government rests, that is
01:50:34 12 the end of their case, okay, but if the defendant then
01:50:39 13 presents evidence in his case, then there is another phase of
01:50:45 14 the trial called rebuttal, where the government is allowed to
01:50:49 15 then present additional evidence to reply to the defendant's
01:50:53 16 evidence.

01:50:53 17 DEFENDANT BEY: I am not having a problem with that,
01:50:56 18 I am talking about when they rest their case, and it is my
01:50:59 19 turn, when I want to present my evidence, I give it to the
01:51:04 20 Judge, and he decides to let them open up again, and they use
01:51:08 21 my evidence.

01:51:11 22 THE COURT: That sounds unusual.

01:51:14 23 DEFENDANT BEY: (INAUDIBLE.)

01:51:18 24 THE COURT: I have never done that, so I cannot think
01:51:20 25 of a reason I would do that once the government has rested.

01:51:25 1 Okay?

01:51:25 2 DEFENDANT BEY: Yes, sir.

01:51:26 3 THE COURT: All right.

01:51:26 4 MR. HOTALING: And Judge, I just need to make sure
01:51:29 5 that the record is clear.

01:51:30 6 That is not my impression nor my recollection of what
01:51:34 7 happened during the trial. So just so the record is clear, I
01:51:38 8 do take objection to that characterization.

01:51:40 9 THE COURT: Don't worry. Silence is not acceptance
01:51:43 10 of that. That is water under the bridge at this point.

01:51:48 11 DEFENDANT BEY: Right.

01:51:48 12 THE COURT: So the next question has to do with
01:51:50 13 forfeiture, Mr. Bey. And of course there is the house and the
01:51:55 14 car, and if you need a couple more days to think about this
01:52:01 15 you can do that, I thought you had received the order, but
01:52:04 16 what I wanted to know was whether you want the jury to decide
01:52:11 17 the question of forfeiture, if you are convicted, or do you
01:52:11 18 want the Court to decide it? And then the government also has
01:52:11 19 to agree if it's going to be the Court.

01:52:23 20 What happened at the first trial?

01:52:25 21 MR. HOTALING: There was a waiver of forfeiture jury.

01:52:27 22 THE COURT: Okay.

01:52:28 23 First, would the government waive again or not?

01:52:30 24 MR. HOTALING: Yes.

01:52:31 25 THE COURT: So I guess you were presented with this

01:52:34 1 issue the first time around, but if you want a couple days to
01:52:38 2 think about it you can.

01:52:41 3 Are you prepared to decide whether you want the jury
01:52:45 4 to decide forfeiture or do you want me to decide forfeiture?

01:52:49 5 DEFENDANT BEY: No, I would like the jury to decide,
01:52:53 6 if we get that far.

01:52:54 7 THE COURT: So if there is a conviction then you want
01:52:58 8 to go right into the jury proceedings.

01:52:58 9 So I will ask the government to prepare and just use
01:53:04 10 the pattern instructions and file them by this Wednesday the
01:53:07 11 11th.

01:53:07 12 MR. HOTALING: Yes, Your Honor.

01:53:08 13 THE COURT: Then Mr. Bey, do you remember the pattern
01:53:14 14 instructions, pattern criminal instructions? There was some
01:53:16 15 discussion of it the first trial. It is on the web site, but
01:53:18 16 there is also a pattern instructions book?

01:53:21 17 DEFENDANT BEY: Uh-huh.

01:53:24 18 THE COURT: So there are jury instructions that have
01:53:27 19 been already written as sort of a model, okay, like a starting
01:53:31 20 point for lawyers to use for all sorts of crimes, but also for
01:53:40 21 forfeiture.

01:53:41 22 So the government is going to propose probably the
01:53:44 23 pattern forfeiture instructions, because we need to instruct
01:53:50 24 the jury on forfeiture.

01:53:51 25 Do you understand?

01:53:52 1 DEFENDANT BEY: But I never saw them. I would like
01:53:55 2 to see them.

01:53:55 3 THE COURT: No one's filed them yet.

01:53:57 4 DEFENDANT BEY: Okay.

01:53:58 5 THE COURT: And it didn't happen the first time,
01:54:01 6 because you waived the jury.

01:54:02 7 DEFENDANT BEY: No, I didn't waive the jury.

01:54:06 8 THE COURT: For the forfeiture part?

01:54:07 9 DEFENDANT BEY: Yes. The jury went back. I never
01:54:11 10 waived the jury.

01:54:11 11 MR. HOTALING: That is actually not true, Judge.

01:54:11 12 DEFENDANT BEY: Maybe they wanted to, but --

01:54:11 13 MR. HOTALING: Judge --

01:54:11 14 DEFENDANT BEY: I've always asked for the jury to
01:54:18 15 decide on it. And we had to stay another hour so the jury
01:54:21 16 could make a decision.

01:54:29 17 THE COURT: Well, if that is accurate, then there
01:54:31 18 should have been jury instructions for forfeiture the first
01:54:34 19 time around.

01:54:34 20 Again, don't worry about what happened the first time
01:54:38 21 with respect to this issue, okay, because it is your right to
01:54:39 22 ask for a jury on forfeiture.

01:54:41 23 DEFENDANT BEY: Yes.

01:54:42 24 THE COURT: So we are going to have one.

01:54:44 25 The government is going to post on this Wednesday

01:54:47 1 proposed instructions.

01:54:48 2 DEFENDANT BEY: Okay.

01:54:49 3 THE COURT: So when those get posted, please look at
01:54:51 4 them, and -- do you have any problem telling the government
01:54:58 5 your email address?

01:54:59 6 DEFENDANT BEY: No, they have my email address.

01:55:01 7 THE COURT: After the hearing just confirm that you
01:55:03 8 have the most current email address for Mr. Bey, and then go
01:55:07 9 ahead and email him a copy at the same time you file it.

01:55:11 10 So we will have the jury decide forfeiture.

01:55:42 11 So this is the bottom of Page 2 of that written
01:55:44 12 order, Mr. Bey.

01:55:45 13 The government brought a motion, as you know, to bar
01:55:49 14 certain lines of argument, and so the following lines of
01:55:53 15 argument, they are irrelevant or meritless so they are barred.
01:55:57 16 And you made this argument again today.

01:56:00 17 There is no exemption you have from the jurisdiction
01:56:04 18 of the United States. And again, you preserved that issue for
01:56:12 19 appeal. You can't argue that to the jury. Do you understand?

01:56:15 20 DEFENDANT BEY: Yeah.

01:56:15 21 THE COURT: The validity or constitutionality of the
01:56:19 22 law, whether it is the charges you face or the tax laws or
01:56:20 23 anything else, that is a legal question for me, and not for
01:56:22 24 the jury.

01:56:23 25 So don't argue that a law, whatever the law is, is

01:56:27 1 invalid or unconstitutional.

01:56:29 2 Do you understand that?

01:56:31 3 DEFENDANT BEY: Yes, sir.

01:56:32 4 THE COURT: Okay.

01:56:33 5 And then any other beliefs you have about the law,
01:56:46 6 and really as to whether it is valid or unconstitutional,
01:56:51 7 those are legal questions that I have to decide.

01:56:54 8 You are free to argue during closing arguments that
01:56:57 9 the law, as given to the jury, through the instructions, all
01:57:00 10 right, that you can argue about, and you can argue about how
01:57:03 11 the facts fit or don't fit those instructions.

01:57:07 12 But again, the validity or constitutionality of any
01:57:10 13 Federal law, that is for me, not the jury.

01:57:14 14 Do you understand?

01:57:17 15 DEFENDANT BEY: Uh-huh.

01:57:18 16 THE COURT REPORTER: Could you answer out loud,
01:57:20 17 please?

01:57:21 18 DEFENDANT BEY: Yes.

01:57:23 19 THE COURT REPORTER: Thank you.

01:57:32 20 THE COURT: All right. Let's see.

01:57:37 21 Next is -- the negligence of the IRS, or the alleged
01:57:41 22 negligence of the IRS.

01:57:45 23 So it is not a defense to these charges, Mr. Bey,
01:57:51 24 that the IRS was allegedly negligent, or made a mistake, in
01:57:59 25 sending refund checks to you. Okay? I am not sure you are

01:58:03 1 even going to argue that, but I do want to make sure that you
01:58:06 2 understand that that argument is off limits.

01:58:09 3 Do you understand that?

01:58:10 4 DEFENDANT BEY: You say it is off limits?

01:58:12 5 THE COURT: It is off limits.

01:58:14 6 DEFENDANT BEY: Well, then how can I address my
01:58:18 7 defense if I can't say certain things that the Internal
01:58:24 8 Revenue Service do?

01:58:26 9 THE COURT: Now, on facts --

01:58:27 10 DEFENDANT BEY: These are going to be facts.

01:58:28 11 THE COURT: Well, that is okay to bring out --

01:58:32 12 DEFENDANT BEY: Okay.

01:58:32 13 THE COURT: (Continuing) -- from the witnesses, or
01:58:35 14 from you, if you testify which is up to you --

01:58:37 15 DEFENDANT BEY: Uh-huh.

01:58:38 16 THE COURT: (Continuing) -- facts about what the IRS
01:58:41 17 did or did not do, as long as those facts are relevant.

01:58:45 18 DEFENDANT BEY: Okay.

01:58:46 19 THE COURT: So if you have a factual argument to make
01:58:49 20 about the IRS issuing those checks, for example, like issuing
01:58:54 21 the first check, then you have that first check, if you
01:58:58 22 believe that that impacted your state of mind, okay, then that
01:59:03 23 is permissible.

01:59:07 24 All right?

01:59:07 25 DEFENDANT BEY: (Nodding head.)

01:59:08 1 THE COURT: What you cannot do is argue as a legal
01:59:11 2 defense to the jury, for example in closing, that, See, the
01:59:15 3 IRS made a mistake -- I am guessing you are going to argue
01:59:23 4 they didn't make a mistake, but what you can't argue is, the
01:59:26 5 IRS made a mistake and therefore I can't be guilty of these
01:59:31 6 charges.

01:59:31 7 Do you understand that difference?

01:59:33 8 DEFENDANT BEY: Yeah.

01:59:34 9 THE COURT: Okay.

01:59:38 10 We will see how it plays out.

01:59:43 11 A couple other things that are off limits are --

01:59:46 12 DEFENDANT BEY: I am going to ask you a question,
01:59:48 13 Judge. Because I -- you know, I am starting to feel like
01:59:53 14 there is an uneven playing field again.

01:59:56 15 Because they are going to sit there and say I took
01:59:59 16 this money and bought so many houses and so many cars and --
02:00:05 17 they don't know what I did with the money, they don't know how
02:00:08 18 much money I have, or what I had, and I think all of that is
02:00:10 19 irrelevant.

02:00:11 20 But I think to stop me from stating what I want to
02:00:15 21 say and prove my point and then allow them to do that is not
02:00:19 22 fair. It is leaving me on an uneven playing field. If we are
02:00:26 23 going to play ball, let's play it evenly.

02:00:32 24 And from what I am reading, they are allowed to say
02:00:35 25 everything, and I am limited, I am very limited, and it is not

02:00:39 1 allowing me to present my argument properly, and theirs is
02:00:46 2 just on presumption. There is nothing they have that is
02:00:50 3 factual.

02:00:51 4 THE COURT: The way I need and any court needs to
02:00:53 5 decide issues of evidence is not to compare -- well, one side
02:00:59 6 proposes 10 pieces of evidence and the other side proposes 10
02:01:03 7 pieces of evidence, and I need to give them around the same
02:01:07 8 number, that is not the way I decide or any court decides
02:01:11 9 whether a piece of evidence or some argument comes in.

02:01:14 10 So even if it feels like, wow, they are really
02:01:19 11 getting every request that they want, and they are not, by the
02:01:22 12 way, but if they seem like they are winning every argument, it
02:01:27 13 is not because I am trying to have an uneven playing field
02:01:33 14 where you are being prejudiced, I am just evaluating one by
02:01:37 15 one what their requests are, and then one by one, what your
02:01:41 16 requests are.

02:01:43 17 And so I have to let the chips fall where they may,
02:01:47 18 even if it seems to you like, hey, I am batting 2 for 10 and
02:01:54 19 they are getting 10 for 10, and I can't say on Mr. Bey's 11th
02:01:59 20 request, I am going to give it to him because I've only given
02:02:07 21 him two. Do you understand? I do have to go one by one.

02:02:07 22 Does that make sense to you?

02:02:08 23 DEFENDANT BEY: Yeah, I understand that. But what I
02:02:09 24 am saying is, everything that they are presenting to you is
02:02:11 25 not factual, they're only presumptions. And there's testimony

02:02:15 1 about somebody who doesn't have firsthand knowledge, and I
02:02:18 2 have firsthand knowledge and you denied me my firsthand
02:02:22 3 knowledge.

02:02:23 4 THE COURT: Yeah, and it depends on what it is. So
02:02:24 5 you talked about the house and the car. Those are really good
02:02:28 6 examples, because as I put in this order, which you will have
02:02:32 7 a chance to read fully after the hearing, you are free to
02:02:38 8 argue that the government's evidence does not show that the
02:02:41 9 money you spent on the car and on the house came from the
02:02:46 10 refund checks, whether it is through testimony of yourself or
02:02:51 11 someone else, you can elicit facts, and then argue to the
02:02:56 12 jury, that that money, to make those purchases, did not come
02:03:00 13 from the refunds. You are absolutely allowed to do that.

02:03:06 14 They are allowed to try to prove that the monies for
02:03:10 15 those purchases came from the refunds.

02:03:13 16 So that is just a classic example of the parties
02:03:17 17 having different versions of the facts, but you will get to
02:03:21 18 argue that.

02:03:22 19 Okay?

02:03:23 20 DEFENDANT BEY: Okay.

02:03:25 21 THE COURT: Okay.

02:03:29 22 A couple other things that are off limits, and
02:03:32 23 really, these are the kinds of things that are off limits not
02:03:36 24 just to you, Mr. Bey. It is not personal to you; this is in
02:03:40 25 every criminal case. Any arguments about the motivation for

02:03:44 1 investigating or prosecuting the case, or any allegations
02:03:48 2 about government misconduct, those are off limits. All right?
02:03:52 3 Do you understand?

02:03:53 4 DEFENDANT BEY: Uh-huh.

02:03:55 5 Any evidence of government misconduct?

02:04:02 6 THE COURT: Well, I could probably be clearer on
02:04:05 7 that.

02:04:05 8 If you believe that -- let me divide it up.

02:04:18 9 If you believe that prosecutors have engaged in
02:04:21 10 misconduct, that is the kind of argument that I have to
02:04:26 11 decide, right? Outside the presence of the jury.

02:04:29 12 So you understand that piece, the prosecutors. Do
02:04:32 13 you get that part?

02:04:33 14 DEFENDANT BEY: Yeah, yeah.

02:04:36 15 THE COURT: And if you believe agents have engaged in
02:04:41 16 misconduct and they are testifying, all right, and you believe
02:04:45 17 that they are not telling the truth, all right, you get to
02:04:49 18 question them about that, or you get to challenge them about
02:04:55 19 that.

02:04:55 20 If they testify about a conversation they had with
02:04:58 21 you, and you think they tricked you into making some
02:05:02 22 statement, or they are not being truthful about what they said
02:05:05 23 you said, you can question them about that, you can argue
02:05:08 24 about that.

02:05:10 25 So I am not trying to prevent you from arguing that

02:05:16 1 the witnesses have their facts wrong or that their conduct
02:05:21 2 toward you was what caused you to say things that they are now
02:05:32 3 introducing into evidence, that you can still pursue.

02:05:36 4 Do you understand?

02:05:39 5 DEFENDANT BEY: Uh-huh.

02:05:40 6 THE COURT: Can you say yes or no out loud, please.

02:05:43 7 DEFENDANT BEY: I --

02:05:44 8 Yes.

02:05:45 9 THE COURT: Okay.

02:05:45 10 DEFENDANT BEY: I am understanding what you are
02:05:47 11 saying, yes.

02:05:49 12 THE COURT: I think we use misconduct as a shorthand
02:05:53 13 before these criminal trials really in cases where both sides
02:05:56 14 have lawyers, so I do realize that that is probably too broad
02:06:01 15 of a word to use with you.

02:06:05 16 All right?

02:06:05 17 DEFENDANT BEY: Yes.

02:06:07 18 Is this case sealed, Judge?

02:06:09 19 THE COURT: No.

02:06:10 20 DEFENDANT BEY: It is not? Okay.

02:06:11 21 THE COURT: No, it is a public --

02:06:14 22 DEFENDANT BEY: Can I request that this case be
02:06:16 23 sealed?

02:06:18 24 THE COURT: Unfortunately it is -- the public itself
02:06:23 25 has a right to view the proceedings.

02:06:27 1 If you are concerned about certain things like your
02:06:30 2 Social Security number or your address --

02:06:32 3 DEFENDANT BEY: I don't care about that.

02:06:35 4 THE COURT: Okay.

02:06:35 5 Other than that, there is really no basis to seal any
02:06:41 6 part of the proceedings.

02:06:43 7 Okay?

02:06:43 8 DEFENDANT BEY: Okay, okay.

02:06:45 9 THE COURT: The next part, and this is important,
02:06:47 10 because you have been through a trial and already served a
02:06:50 11 prison sentence.

02:06:52 12 You can't, nor can the government, mention any of the
02:06:55 13 penalties you might face if you are convicted. Do you
02:07:00 14 understand that?

02:07:00 15 DEFENDANT BEY: Uh-huh.

02:07:01 16 THE COURT: Please, out loud.

02:07:03 17 Yes or no?

02:07:04 18 DEFENDANT BEY: No, I wouldn't mention it.

02:07:07 19 I don't know. I couldn't mention it.

02:07:14 20 THE COURT: The same goes for the fact that you have
02:07:17 21 already served a term of imprisonment, okay? You cannot
02:07:21 22 mention that to the jury, do you understand?

02:07:23 23 DEFENDANT BEY: I wouldn't mention that, yes.

02:07:27 24 THE COURT: Obviously it is not necessarily a good
02:07:30 25 thing for you.

02:07:31 1 The other thing is you just said, you are not even
02:07:35 2 sure of the penalties that you face.

02:07:38 3 I think that -- well, I am quite sure that at various
02:07:42 4 points in the proceedings you have been told, certainly at the
02:07:47 5 first time you appeared in this case, the initial appearance,
02:07:50 6 and at the sentencing phase you should have also been alerted
02:07:55 7 as to what the maximum penalties are.

02:07:58 8 Are you still confused about what the maximum
02:08:00 9 penalties are?

02:08:05 10 DEFENDANT BEY: I think I remember. I don't remember
02:08:08 11 what they were.

02:08:09 12 THE COURT: All right.

02:08:09 13 MR. HOTALING: Judge, I think we did it our first
02:08:12 14 appearance before this Court.

02:08:13 15 THE COURT: Right, because I wanted to make sure that
02:08:19 16 you understood at least the possibility that you were still
02:08:24 17 facing more time, imprisonment time, and I thought we had gone
02:08:31 18 through the penalties again, the maximum penalties.

02:08:38 19 If you don't remember doing that, then we ought to do
02:08:48 20 that right now.

02:08:49 21 DEFENDANT BEY: Okay.

02:08:54 22 Do you have that --

02:08:56 23 MR. HOTALING: I have the indictment, Judge.

02:08:58 24 THE COURT: But do you have like your initial
02:09:00 25 appearance jacket or anything like that?

02:09:02 1 MR. HOTALING: No, but I know, Judge, Counts One and
02:09:07 2 Two are violations of 18 USC 1341, which is mail fraud. Just
02:09:13 3 off the top of my head, I believe that is a 20-year statutory
02:09:16 4 term of imprisonment, maximum fine of \$250,000, or twice the
02:09:22 5 gain associated with the offense, and a term of supervised
02:09:26 6 release of not more than three years.

02:09:29 7 And then there are Counts 3 through 8, and they are
02:09:37 8 each violations of Title 18 U.S. Code Section 287, I -- I --
02:09:44 9 that one I am not -- I don't have at the top of my head.

02:09:48 10 THE COURT: I will look it up.

02:09:50 11 So first, Mr. Bey, do you understand that on the
02:09:54 12 first two counts the maximum penalties are, because there is
02:09:57 13 no bank involved, so it is a 20-year maximum on each count,
02:10:02 14 okay? Those are the mail fraud counts. A maximum fine of the
02:10:07 15 greater of three numbers, \$250,000, twice the gain that the
02:10:17 16 defendant allegedly obtained, or twice the loss that the
02:10:21 17 defendant allegedly inflicted, and then a term of supervised
02:10:25 18 release of no more than three years.

02:10:26 19 In theory they can be put on top of each other called
02:10:31 20 consecutive.

02:10:31 21 So do you understand what the maximum penalties are,
02:10:37 22 Counts One and Two, the mail fraud?

02:10:37 23 DEFENDANT BEY: I hear you, yes.

02:10:42 24 THE COURT: Okay.

02:10:44 25 Then the 287 false claims are -- and I think there

02:10:46 1 are six of them, Counts 3 through 8, are maximum imprisonment
02:10:51 2 terms of five years, and then the same thing with the fines,
02:10:55 3 okay, \$250,000, or twice the gross gain, or the gross loss,
02:11:01 4 and then supervised release of not more than three years.

02:11:05 5 Again, that is on each count, so in theory they can
02:11:08 6 be stacked on top of each other.

02:11:10 7 So do you understand what the maximum penalties are
02:11:13 8 on the 287 counts as well?

02:11:15 9 DEFENDANT BEY: Yes, I heard you. I understand,
02:11:17 10 uh-huh, yes.

02:11:18 11 THE COURT: All right.

02:11:23 12 So now we are at the bottom of Page 4, Mr. Bey, back
02:11:28 13 to the order, and top of Page 5.

02:11:33 14 So if you have some complaint about discovery, and
02:11:36 15 the same goes for the government if they think they didn't get
02:11:40 16 something from you, that issue has to be raised with me
02:11:44 17 outside the presence of the jury.

02:11:45 18 Do you understand that?

02:11:47 19 DEFENDANT BEY: Yes.

02:11:52 20 THE COURT: And then lastly on this motion, there is
02:12:00 21 the burden of proof of beyond a reasonable doubt, and as you
02:12:04 22 might recall from the first -- although I guess I am not sure
02:12:09 23 exactly what happened during the instructions, but generally,
02:12:11 24 we don't tell the jury some detailed definition of reasonable
02:12:15 25 doubt, like, what does that mean, and we leave it up to them

02:12:19 1 to decide. All right?

02:12:20 2 So do you understand, don't try to define for the
02:12:24 3 jury what exactly does reasonable doubt mean.

02:12:27 4 Does that make sense?

02:12:28 5 DEFENDANT BEY: Yes, it makes sense.

02:12:29 6 THE COURT: You absolutely are entitled to argue that
02:12:33 7 that is the government's burden of proof, and you are
02:12:38 8 absolutely entitled to argue that their proof doesn't meet the
02:12:43 9 burden of reasonable doubt. But don't try to explain what
02:12:46 10 that definition is.

02:12:48 11 All right?

02:12:48 12 DEFENDANT BEY: Okay, yes.

02:12:50 13 THE COURT: All right.

02:12:51 14 We talked about Page 5, the bottom half, and that is
02:12:55 15 the monies that the government says were from the refunds, and
02:12:59 16 so they are going to be allowed to introduce that evidence,
02:13:02 17 because it is relatively close in time, and you are allowed to
02:13:06 18 respond to that evidence and argue that it doesn't show what
02:13:09 19 the government says it does.

02:13:11 20 All right?

02:13:27 21 DEFENDANT BEY:

02:13:37 22 (Perusing document.)

02:13:39 23 DEFENDANT BEY: There is a lot of wording in here
02:13:41 24 that I don't like, but that's -- you know.

02:13:44 25 THE COURT: I --

02:13:44 1 DEFENDANT BEY: I ain't no attorney, so I just --
02:13:46 2 what else am I going to do. I can't do nothing but --

02:13:50 3 THE COURT: You are certainly welcome to ask me
02:13:52 4 questions about it because I know you are just reading it now.

02:14:00 5 DEFENDANT BEY: Yes.

02:14:00 6 (Perusing document.)

02:14:02 7 DEFENDANT BEY: I see there is expensive trips,
02:14:06 8 gambling -- they don't know anything that I did. That is
02:14:09 9 ludicrous for them to even put that in there.

02:14:17 10 That is crazy.

02:14:18 11 MR. HOTALING: What?

02:14:19 12 THE COURT: That was from another case. I was
02:14:21 13 quoting from another case.

02:14:23 14 The government is not introducing --

02:14:26 15 MR. HOTALING: Not of gambling.

02:14:28 16 THE COURT: Evidence of gambling or expensive trips,
02:14:31 17 Mr. Bey, that was a quotation from another case, just for the
02:14:34 18 same idea that the government does get to show that a
02:14:40 19 defendant has a motive to commit a financial crime, meaning
02:14:44 20 that they buy things with the money, and that is what I am
02:14:47 21 allowing them to argue. And as I said, you can respond back
02:14:51 22 to that either with facts or you can just argue that the facts
02:14:55 23 don't show that the monies came from the refunds.

02:14:59 24 All right?

02:14:59 25 DEFENDANT BEY: Okay.

02:15:01 1 THE COURT: Okay.

02:15:08 2 Page 6.

02:15:09 3 There are certain government exhibits that have to do
02:15:11 4 with your bank records and records of things like purchases of
02:15:19 5 the car, or cars, plural. And there is a rule of evidence
02:15:22 6 that allows the government to obtain an affidavit, all right,
02:15:27 7 an under oath statement, from the records custodian, that is a
02:15:33 8 fancy way of saying the people who keep the records, saying
02:15:36 9 that, here, the attached records are from whatever financial
02:15:44 10 account it is, we keep that information in the ordinary course
02:15:47 11 of doing our business, and the information on there is made
02:15:52 12 around the time of the information's creation.

02:15:58 13 So they are allowed to use this sworn statement to
02:16:03 14 introduce that evidence as opposed to calling in that person
02:16:09 15 who would then say, yeah, these are the records of our
02:16:12 16 company.

02:16:13 17 So that is Rule 902, subparagraph 11, so 902.11.

02:16:22 18 I think you had objected, it wasn't very explained,
02:16:26 19 but you had objected to the government's use of those
02:16:29 20 affidavits from the record keepers. And it is my choice, all
02:16:35 21 right, to decide whether there are some circumstances that
02:16:43 22 would make me suspicious enough that I would require the
02:16:44 23 government to bring in the record keeper, have them sit there,
02:16:47 24 and then you could ask them questions.

02:16:49 25 So is there anything about the records themselves

02:16:52 1 that make you doubt that they are authentic, like they are
02:16:55 2 genuine records?

02:16:59 3 DEFENDANT BEY: Um --

02:17:00 4 THE COURT: Or was your complaint really that these
02:17:03 5 are not purchases made by monies from the refunds?

02:17:09 6 DEFENDANT BEY: Well, what I am saying is, you're
02:17:12 7 saying authenticated. He got his records from the bank, you
02:17:16 8 said, the bank keepers who have records of the checks, that
02:17:21 9 you are saying that I cashed, that I sent them in and cashed
02:17:25 10 in order to acquire certain things.

02:17:28 11 Is that what you are saying?

02:17:29 12 THE COURT: We have to split that up into a couple of
02:17:32 13 things.

02:17:32 14 Because there are the bank records, that is the first
02:17:35 15 part of what you said.

02:17:36 16 DEFENDANT BEY: Yes, okay.

02:17:37 17 THE COURT: To purchase certain things.

02:17:39 18 And then there are other records for that as well
02:17:43 19 that don't necessarily come from the bank, they come from like
02:17:46 20 car dealerships.

02:17:48 21 DEFENDANT BEY: Okay.

02:17:48 22 THE COURT: And my question to you is, do you have
02:17:51 23 some concern that those aren't accurate records from either
02:17:57 24 the banks or the car dealerships?

02:18:00 25 DEFENDANT BEY: Well, I don't have concerns with

02:18:02 1 that.

02:18:02 2 As I was stating before, I have concerns with the
02:18:05 3 monies. I worked a job. I was putting \$5,000 in there every
02:18:12 4 month. So they don't know where the money come from.

02:18:14 5 THE COURT: And that is the kind of evidence you can
02:18:18 6 certainly bring out, either through witnesses, or if you
02:18:20 7 testify, which is up to you. But if you can't explain why
02:18:30 8 there might be problems about the genuineness, or the
02:18:34 9 accuracy, of the records that the government proposes to
02:18:37 10 introduce with these affidavits, then I am not going to
02:18:40 11 require the record keepers to come in.

02:18:46 12 So last chance, is there anything about the
02:18:49 13 genuineness or the accuracy of those records that concerns
02:18:53 14 you?

02:18:53 15 DEFENDANT BEY: Yeah, because -- I would like to
02:18:56 16 question them. I would personally like to question them since
02:19:01 17 they had an opportunity to question them, I would like to see
02:19:04 18 how genuine they are and what evidence do they have, and is it
02:19:10 19 legitimate. I would like to find that out for myself.

02:19:14 20 THE COURT: Okay.

02:19:15 21 I am going to exercise my discretion to disallow
02:19:18 22 that.

02:19:19 23 DEFENDANT BEY: Okay. (Laughter.)

02:19:25 24 THE COURT: The Supreme Court has decided that
02:19:28 25 certain records are not what we call testimonial, that is the

02:19:36 1 key word, because they weren't -- they weren't generated for
02:19:42 2 law enforcement or for prosecution, they were just generated
02:19:48 3 because it is in the ordinary course of the business.

02:19:51 4 DEFENDANT BEY: Yeah, but you said -- generated for
02:19:54 5 them, but you allow them to use it, but you're not allowing me
02:19:57 6 to get the same results, to question them also, but you are
02:20:02 7 allowing them to question them.

02:20:03 8 You said they weren't generated for that, but they
02:20:07 9 are allowed to question the guys, females, or whoever, to find
02:20:13 10 out -- to get the information that they got, but I am not
02:20:16 11 allowed to do the same thing.

02:20:18 12 THE COURT: Well, here is --

02:20:19 13 DEFENDANT BEY: That is why I say it is not an even
02:20:22 14 playing field.

02:20:23 15 THE COURT: The rule does not require the record
02:20:25 16 keeper to come in if there is not really a concern about the
02:20:30 17 genuineness or the accuracy. So I am not going to require the
02:20:35 18 government to bring them in.

02:20:36 19 Having said that, you do have the power of what we
02:20:40 20 call subpoena, so you can serve a subpoena on the record
02:20:45 21 keepers, and you can bring them in, okay, and you just have to
02:20:50 22 make a decision, and you also have to get them served, as soon
02:20:54 23 as possible, if you are going to do that.

02:20:57 24 DEFENDANT BEY: Right.

02:20:57 25 THE COURT: Okay?

02:20:58 1 DEFENDANT BEY: Okay.

02:21:01 2 THE COURT: All right.

02:21:02 3 Now your exhibits, Mr. Bey, let's move on to your
02:21:30 4 exhibits.

02:21:33 5 Do you have a copy with you?

02:21:34 6 DEFENDANT BEY: No, I don't.

02:21:36 7 MR. HOTALING: We can share, I have them in a binder
02:21:38 8 and I --

02:21:39 9 THE COURT: You know what I can do? I will put them
02:21:41 10 on the screen.

02:21:42 11 Okay, Mr. Bey? I can put them on the screen.

02:21:45 12 DEFENDANT BEY: Okay.

02:21:46 13 THE COURT: Hold on one second, please.

02:22:11 14 DEFENDANT BEY: All right.

02:22:13 15 THE COURT: Do you see this on the screen in front of
02:22:14 16 you?

02:22:16 17 DEFENDANT BEY: Yes.

02:22:18 18 THE COURT: You listed 7 attachments as what you
02:22:20 19 wanted to introduce.

02:22:21 20 So you see where I highlighted there? For the
02:22:24 21 record, I am reading from docket entry 160 which was the set
02:22:29 22 of exhibits the defendant proposed. This is the PDF page 3,
02:22:34 23 and it is entitled, lawful notice.

02:22:40 24 So is the idea, Mr. Bey, that the documents that you
02:22:43 25 attached would show, as the first sentence under the title

02:22:47 1 says, that you are not a United States citizen?

02:22:50 2 DEFENDANT BEY: Yes, I am not a U.S. citizen.

02:22:58 3 THE COURT: That is the purpose of these exhibits
02:23:00 4 then?

02:23:00 5 DEFENDANT BEY: Yes, to let you know I am not a U.S.
02:23:05 6 citizen. I am not a ward of the State. I am not a Fourteenth
02:23:10 7 Amendment citizen. I am not an artificial person. I am not
02:23:13 8 an entity, I am a flesh and blood man.

02:23:18 9 So what I am showing you is that, you know -- that is
02:23:23 10 why you don't have jurisdiction, because you are not dealing
02:23:26 11 with a fictional or a corporation or a thing, you are dealing
02:23:32 12 with a flesh and blood man.

02:23:34 13 So what I am showing you is that -- this is what -- I
02:23:39 14 sent you the certification from the Internal Revenue Service
02:23:42 15 stating that I am not a U.S. citizen.

02:23:50 16 THE COURT: That is what I figured, because obviously
02:23:52 17 it says that -- you were trying to show that you are not a
02:23:56 18 United States citizen.

02:23:57 19 So this more than goes to the jurisdictional decision
02:24:03 20 you have been making, which is a question of law for the Court
02:24:05 21 to decide.

02:24:06 22 DEFENDANT BEY: Not just that, the fact that this
02:24:09 23 equity, if this is a court of equity, then I ask for
02:24:17 24 subrogation, and to certify the subrogation and to pay the
02:24:21 25 debt, when I actually wanted an equity court, you never did

02:24:28 1 answer me, you just went around me.

02:24:29 2 And so I wanted to let the record reflect that when
02:24:37 3 I asked if it was an equity court, I did not get an answer,
02:24:41 4 and if we are in equity, then I am the beneficiary of this
02:24:46 5 trust.

02:24:47 6 I asked you was this -- did you acknowledge the
02:24:52 7 trust. That is one of the reasons why I asked you, did you
02:24:55 8 disclaim the trust.

02:24:57 9 THE COURT: And again, whether -- there is no -- I am
02:25:01 10 afraid there is no legal effect, and here no factual one
02:25:08 11 either, to whether you are a trust, and --

02:25:12 12 DEFENDANT BEY: Not whether I am a trust, I know I am
02:25:14 13 not a trust, it is dealing with trust.

02:25:16 14 We were brought in here, this case was brought in,
02:25:19 15 because of a trust, the monies that the Internal Revenue
02:25:25 16 Service sent to me was from a trust, so it has to be equity,
02:25:29 17 it has to be an equity court.

02:25:31 18 This is not an equity jurisdiction.

02:25:36 19 THE COURT: There is no division in the Federal
02:25:38 20 Courts between a court of equity or otherwise, so we do have
02:25:44 21 jurisdiction under the law that I cited earlier.

02:25:45 22 DEFENDANT BEY: Well, equity is over law.

02:25:48 23 THE COURT: So, I think, Mr. Bey, because of the
02:25:50 24 purpose of these exhibits, they -- they are not for the jury
02:25:55 25 to consider. So they are part of the record, you have made

02:25:59 1 them part of the record, so if you have some other legal
02:26:03 2 argument you want to make based on them, the Court of Appeals
02:26:07 3 will have a chance to view them, but these are not exhibits
02:26:10 4 that can go before the jury.

02:26:11 5 DEFENDANT BEY: Okay.

02:26:13 6 THE COURT: Okay.

02:26:14 7 Then the government.

02:26:21 8 DEFENDANT BEY: I don't accept that, but there is
02:26:23 9 nothing I can do about it. I am not accepting anything you
02:26:26 10 are saying, but I have to. I mean, it is going to proceed
02:26:30 11 anyway without my permission or my consent. But there is
02:26:33 12 nothing I can do about it. So.

02:26:34 13 THE COURT: It is just like when the government loses
02:26:36 14 and I overrule one of their objections, then they have to take
02:26:41 15 it up with the Court of Appeals if it is a problem.

02:26:45 16 DEFENDANT BEY: Okay.

02:26:46 17 THE COURT: So the one exhibit I think you did have
02:26:49 18 an objection to that the government had proposed was
02:26:51 19 Government Exhibit 52, and this was that timeline, so -- hold
02:26:56 20 on a second.

02:27:03 21 Hold on. I can pull that up.

02:27:10 22 DEFENDANT BEY: Yeah, because I remember, you gave
02:27:13 23 them to -- to the 4th to file the documents, I never received
02:27:19 24 anything on the 4th, but I saw they did file something on the
02:27:22 25 6th, but you gave them the 4th last time we was here.

02:27:26 1 THE COURT: What are you referring to, Mr. Bey?

02:27:29 2 DEFENDANT BEY: To answer the challenge to the
02:27:32 3 jurisdiction and the --

02:27:39 4 THE COURT: They did respond on April 4. They did
02:27:42 5 file on April 4, Mr. Bey.

02:27:45 6 DEFENDANT BEY: Because when I looked at it in the
02:27:47 7 docket, it says the 6th.

02:27:49 8 THE COURT: That was my order on the 6th.

02:27:52 9 DEFENDANT BEY: Oh, okay.

02:27:53 10 MR. HOTALING: It's got the date.

02:27:55 11 DEFENDANT BEY: I never received anything, that is
02:27:58 12 why -- I never received anything from them.

02:28:00 13 THE COURT: I think it might help if you --

02:28:02 14 MR. HOTALING: And Judge, I heard a lot of this out
02:28:05 15 in the hallway, apparently -- we have made an effort to send
02:28:11 16 any number of different documents through the mail to Mr. El
02:28:15 17 Bey and he said he hasn't received them.

02:28:17 18 DEFENDANT BEY: I haven't received them.

02:28:18 19 MR. HOTALING: I don't know why that's the case.

02:28:20 20 I can certainly represent to the Court as an officer
02:28:22 21 of the court that on the required dates we put into the mail
02:28:24 22 the required materials.

02:28:26 23 I gave Mr. El Bey today copies of additional stuff
02:28:29 24 that we tendered, that we mailed to him, I think on April 4th.
02:28:32 25 And again, he indicates that he hasn't received it. We

02:28:35 1 provided another copy of that material in person. I handed it
02:28:39 2 to him today.

02:28:40 3 THE COURT: Mr. Bey, can you just look at the -- I
02:28:43 4 don't want to state it on the record because this is a
02:28:49 5 criminal case, but is this your home address here
02:28:53 6 (indicating)?

02:28:53 7 DEFENDANT BEY: It is.

02:28:55 8 THE COURT: We might as well put this on. What is
02:28:59 9 the email address to reach you at?

02:29:01 10 DEFENDANT BEY: It is b-e-y-h-a-k-e-e-m 1959 at Gmail
02:29:13 11 dot com.

02:29:13 12 MR. HOTALING: Judge, I was grabbing my paper.

02:29:17 13 THE COURT: I will repeat it.

02:29:20 14 It was b-e-y-h-a-k-e-e-m.

02:29:22 15 DEFENDANT BEY: Yes.

02:29:23 16 THE COURT: 1959.

02:29:26 17 DEFENDANT BEY: Yes.

02:29:27 18 THE COURT: At Gmail dot com.

02:29:31 19 DEFENDANT BEY: Yes.

02:29:31 20 THE COURT: So we will just make sure that we send
02:29:34 21 items that way too.

02:29:36 22 DEFENDANT BEY: And also, I was trying to look at the
02:29:39 23 docket, we couldn't get into the docket, by my computer
02:29:43 24 either.

02:29:44 25 MR. HOTALING: Your home computer?

02:29:45 1 DEFENDANT BEY: Yes.

02:29:49 2 I thought everything had switched over to where you
02:29:52 3 can get in them now, but I still couldn't get in them.

02:29:55 4 THE COURT: Mr. Bey, do you have a -- there is a user
02:30:01 5 ID that you have to obtain and register for and -- you haven't
02:30:05 6 done any of that?

02:30:06 7 DEFENDANT BEY: No, no.

02:30:07 8 THE COURT: So you are not going to be able to access
02:30:10 9 the docket from outside of the 20th floor.

02:30:14 10 DEFENDANT BEY: Oh, oh.

02:30:15 11 THE COURT: You can go to the 20th floor, there are
02:30:20 12 terminals and you can --

02:30:21 13 DEFENDANT BEY: I went there early and looked it up.
02:30:24 14 But we can't get it at home?

02:30:27 15 THE COURT: You have to go through training and some
02:30:29 16 other steps.

02:30:29 17 DEFENDANT BEY: Oh, oh, oh, okay.

02:30:31 18 THE COURT: After this hearing you can go down to the
02:30:33 19 20th floor and ask them, but I think, like I said, you have to
02:30:37 20 go through training, and fill out some other forms. I am not
02:30:41 21 sure it would all happen before the trial.

02:30:44 22 So, as I said, we will email you anything we enter,
02:30:49 23 the government is directed to email you as well at that
02:30:53 24 address, and if you do have questions, I guess I will -- you
02:30:59 25 could also ask, you know, Mr. Fuentes, if there is some filing

02:31:04 1 that you expected and you haven't got, maybe he could check
02:31:07 2 the docket for you.

02:31:08 3 All right?

02:31:09 4 DEFENDANT BEY: Okay.

02:31:10 5 THE COURT: Okay.

02:31:12 6 But getting back to the exhibits, do you remember
02:31:15 7 getting a set of the government's exhibits, and this was a few
02:31:20 8 weeks ago now, and you were supposed to tell them whether you
02:31:23 9 objected to exhibits or not?

02:31:26 10 Does this sound familiar?

02:31:27 11 DEFENDANT BEY: Um, yes, we met at Mr. Fuentes'
02:31:32 12 office.

02:31:32 13 THE COURT: Okay.

02:31:32 14 DEFENDANT BEY: Yes, sir.

02:31:33 15 THE COURT: I am putting on the screen --

02:31:36 16 Do you see it?

02:31:37 17 DEFENDANT BEY: Yes.

02:31:38 18 THE COURT: That is Government Exhibit 52, and this
02:31:41 19 is the only exhibit that there was a pre-trial objection made
02:31:45 20 to, so it is this timeline.

02:31:49 21 Does this look familiar now?

02:31:55 22 DEFENDANT BEY: What does --

02:31:58 23 (Discussion held off the record between the attorney
02:31:58 24 and client.)

02:32:02 25 DEFENDANT BEY: Yes.

02:32:04 1 THE COURT: Let me make sure with the government,
02:32:09 2 this is just going to be a demonstrative exhibit.

02:32:11 3 MR. HOTALING: It is a 1006 summary exhibit, Judge.

02:32:17 4 THE COURT: Is it a 1006 summary, though?

02:32:17 5 MR. HOTALING: There is underlying records and it
02:32:23 6 provides -- obviously the exhibits are voluminous.

02:32:28 7 THE COURT: Are they?

02:32:28 8 MR. HOTALING: Well, this is them all printed out.

02:32:30 9 THE COURT: But each one of those rectangles, each
02:32:34 10 one of the events, you could probably boil down to, you know,
02:32:38 11 a couple pages within the group -- within some group exhibit.

02:32:47 12 MR. HOTALING: So, Judge, our position that it is a
02:32:51 13 1006, that it accurately represents the voluminous records, if
02:32:55 14 the Court was inclined to say that it is not a 1006, we would
02:33:00 15 certainly intend to use it as demonstrative, certainly during
02:33:03 16 closing argument, that would be our request.

02:33:05 17 I think it is the government's position that it does
02:33:09 18 fall within the scope of the rule and would ask for a ruling
02:33:11 19 accordingly, but we will proceed with however the Court rules.

02:33:17 20 THE COURT: It is more demonstrative than it is --

02:33:26 21 I mean, I can see how -- yes, I do think this is more
02:33:45 22 demonstrative than 1006.

02:33:49 23 Most of these events you could boil down to one or
02:33:53 24 two pages out of the actual underlying exhibit, and it is --
02:33:58 25 yes, it is much more in the nature of an argumentative

02:34:03 1 timeline than it is a 1006 summary.

02:34:09 2 So here is what I am going to do with this exhibit,
02:34:12 3 Mr. Bey, and you can react to this.

02:34:15 4 I am not going to allow the government to introduce
02:34:20 5 this into evidence for the jury to take back with it for jury
02:34:24 6 deliberations.

02:34:26 7 What the government can do with it is have a witness
02:34:30 8 testify how it was prepared, and where the information came
02:34:37 9 from, to just demonstrate, all right, that witness's testimony
02:34:42 10 about the timing of the events on this exhibit, but then the
02:34:48 11 jury is not going to be able to take it back with them, so it
02:34:52 12 won't be introduced into evidence as what we call a
02:34:55 13 substantive exhibit, all right, it is just to demonstrate the
02:34:58 14 in-court testimony, and then the government can use it during
02:35:03 15 its closing argument as well to show, you know, here is what
02:35:07 16 the evidence showed.

02:35:10 17 You can respond to it in closing, as well as during
02:35:13 18 the trial with facts, but they won't -- the jury won't be able
02:35:18 19 to take it back with them.

02:35:19 20 So what is your reaction to that? Do you still have
02:35:26 21 an objection?

02:35:27 22 DEFENDANT BEY: Yeah, but you say you are only going
02:35:29 23 to -- I do object to it. But you said you are just going to
02:35:34 24 make it relevant just to asking the witness?

02:35:41 25 THE COURT: Right. It is only to demonstrate the

02:35:44 1 witness's testimony, that is why it is called demonstrative,
02:35:48 2 but it is not going to come in so the jury can take it back
02:35:51 3 with them and actually make decisions off of that exhibit. Do
02:35:55 4 you understand?

02:35:55 5 DEFENDANT BEY: If -- if --

02:35:57 6 THE COURT: Let me give you an example.

02:35:59 7 Let's say you wanted in closing arguments to insert
02:36:02 8 before the purchases, because you say you were making a
02:36:06 9 salary, and that some of the monies might have come from your
02:36:08 10 salary, if you put together a timeline that had your
02:36:13 11 paychecks, and then the purchase, then that would be a
02:36:17 12 demonstrative -- that could be a demonstrative piece of
02:36:21 13 evidence and then you could use it in closing, just like the
02:36:24 14 government can use this kind of timeline in favor of its case.
02:36:31 15 So that is the difference.

02:36:32 16 DEFENDANT BEY: But once it is introduced, it is
02:36:34 17 going to stick in their minds. Do you know what I am saying?

02:36:39 18 THE COURT: Right, but I am going to instruct them,
02:36:41 19 first of all, that it is a demonstrative exhibit only, and
02:36:45 20 demonstrative exhibits are only used to help explain the
02:36:50 21 witness's testimony, and then they won't have it back in
02:36:53 22 there.

02:36:53 23 But that is the point of demonstrative exhibits,
02:36:57 24 Mr. Bey, so that the jury has some sort of visual to help them
02:37:01 25 understand one side's case or the other.

02:37:04 1 And you can use some too.

02:37:07 2 DEFENDANT BEY: Okay. Okay.

02:37:09 3 THE COURT: So for that purpose it is permissible, I
02:37:11 4 think.

02:37:12 5 DEFENDANT BEY: Okay.

02:37:12 6 THE COURT: So 52 will be allowed as a demonstrative
02:37:16 7 exhibit only.

02:37:24 8 And then -- I don't think we have much more to talk
02:37:32 9 about.

02:37:32 10 I don't think you submitted a witness list.

02:37:36 11 Do you plan to call anyone, Mr. Bey, to testify on
02:37:39 12 your own behalf?

02:37:39 13 DEFENDANT BEY: Not as of right now.

02:37:41 14 Do I have to have it right now?

02:37:48 15 If I decide as the trial goes along I want to bring
02:37:51 16 in a witness, I can't bring that witness in then?

02:37:54 17 THE COURT: Well, you can certainly propose a witness
02:37:56 18 that you have not identified before, but it is subject to a
02:38:03 19 whole bunch of rules.

02:38:04 20 DEFENDANT BEY: Okay.

02:38:05 21 THE COURT: So, for example, there are rules that
02:38:07 22 require you to identify before trial, and I don't think this
02:38:13 23 applies, but I'm just giving you examples like alibi
02:38:16 24 witnesses, or witnesses that are experts.

02:38:21 25 So there are rules that would require you to identify

02:38:26 1 someone beforehand, and if you don't have a good reason for
02:38:29 2 not doing that beforehand, then they can't testify. Okay?

02:38:32 3 DEFENDANT BEY: Okay.

02:38:33 4 THE COURT: So I certainly urge you, if you have
02:38:35 5 anyone you are thinking of that could possibly testify on your
02:38:38 6 behalf to let us know about that. Okay?

02:38:40 7 DEFENDANT BEY: Okay.

02:38:41 8 THE COURT: Do you have anyone in mind right now?

02:38:44 9 DEFENDANT BEY: Not right now, Judge.

02:38:45 10 THE COURT: Okay.

02:38:46 11 And then the -- can you remind me, did you call
02:38:52 12 witnesses at the last trial?

02:38:53 13 DEFENDANT BEY: Um, yeah, I did. I had one witness.

02:38:57 14 THE COURT: That is right.

02:39:01 15 And the other important thing for you to know is it
02:39:05 16 is your responsibility to line them up, too, to be ready to
02:39:09 17 testify on time.

02:39:10 18 DEFENDANT BEY: Yes.

02:39:10 19 THE COURT: And you do have the power of the subpoena
02:39:14 20 to -- and there I would certainly urge you again to consult
02:39:18 21 with Mr. Fuentes if you want to try to issue and serve a
02:39:23 22 subpoena on someone. But be forewarned, please, that we are
02:39:31 23 two weeks out from the trial, so you need to have even the
02:39:34 24 potential witnesses lined up, so we don't have to delay the
02:39:39 25 trial for you to scramble and find them.

02:39:42 1 Do you understand?

02:39:45 2 DEFENDANT BEY: Yes, yes, I do.

02:39:47 3 THE COURT: All right.

02:39:48 4 For jury selection, do you want me to explain how I
02:39:57 5 pick a jury?

02:39:57 6 DEFENDANT BEY: Yes.

02:40:00 7 THE COURT: So what we will do is we will call in
02:40:04 8 several dozen individuals, let's call it 36, I don't know what
02:40:10 9 the exact number will be, but it will be about 36 or so people
02:40:17 10 who are eligible to serve on a jury.

02:40:18 11 The way I will seat them is by number. You will get
02:40:23 12 a list right on that morning, because the jury department
02:40:26 13 creates the list that morning. You will get a list of juror
02:40:30 14 numbers for say 1 through 36, with their names on there, and
02:40:34 15 what I will do is I will have juror number 1 sit in the first
02:40:39 16 seat of the first row closest to me.

02:40:42 17 DEFENDANT BEY: Okay.

02:40:42 18 THE COURT: Then number 2 will sit to that person's
02:40:45 19 left.

02:40:46 20 DEFENDANT BEY: Okay.

02:40:46 21 THE COURT: And then 3, until we get to 7.

02:40:50 22 DEFENDANT BEY: Okay.

02:40:51 23 THE COURT: You see that?

02:40:51 24 DEFENDANT BEY: Yes.

02:40:52 25 THE COURT: And then the back row will be 8, will be

02:40:55 1 closest to me, the back row, to 14.

02:40:56 2 DEFENDANT BEY: Okay.

02:40:57 3 THE COURT: And I am telling you this because it
02:41:04 4 might help you to keep track of their answers during jury
02:41:10 5 selection if you make kind of a graphical or visual map of the
02:41:15 6 jury box.

02:41:15 7 DEFENDANT BEY: Uh-huh.

02:41:16 8 THE COURT: Then 15 will sit in the first row of the
02:41:20 9 gallery, the wooden bench, near that big screen TV near the
02:41:23 10 wall, that is 15.

02:41:24 11 DEFENDANT BEY: Okay.

02:41:25 12 THE COURT: It will be 15 through 22, so 22 will be
02:41:28 13 sitting in the first bench, but on the aisle.

02:41:31 14 DEFENDANT BEY: Okay.

02:41:32 15 THE COURT: And then -- no, it is 15 to 21, actually,
02:41:40 16 sorry 15 to 21.

02:41:45 17 Then 22 will sit in the second row of the gallery
02:41:46 18 against the wall, and it will be 22 to 28, and then 29 to 35
02:41:55 19 and so on.

02:41:58 20 Then they will have a letter from me to them, and
02:42:01 21 this is on the web site, saying please give me your background
02:42:04 22 information, where do you live, do you own or rent your house,
02:42:08 23 are you married and so on.

02:42:09 24 So juror Number 1 will give that information first,
02:42:13 25 and then juror Number 2, and 3, and so on. And after they are

02:42:18 1 done giving us their background information, then I will ask
02:42:21 2 them additional questions. And the parties have proposed some
02:42:25 3 additional questions, and I will decide which ones are
02:42:28 4 appropriate to ask, and then we will ask them additional
02:42:33 5 questions.

02:42:33 6 After they give answers to that, and a lot of those
02:42:36 7 answers we will probably take at the side bar so that all the
02:42:40 8 jurors don't hear what they have to say, then we will let
02:42:44 9 those jurors leave usually for lunch, but maybe just a break,
02:42:52 10 and then when we are alone here in the courtroom, without the
02:42:56 11 jurors in here, we will talk about any objections to any
02:43:00 12 potential juror that you think can't fairly sit in judgment of
02:43:05 13 you, and then I will knock those people out.

02:43:07 14 And then we will have -- you might remember the
02:43:10 15 peremptory challenges, right?

02:43:14 16 DEFENDANT BEY: (Nodding head.)

02:43:15 17 THE COURT: Where you get to pick 10 people and you
02:43:18 18 get to knock them out, they won't get to sit on the jury.

02:43:21 19 DEFENDANT BEY: Okay.

02:43:22 20 THE COURT: And the government will pick 6 and we
02:43:24 21 will knock them out.

02:43:26 22 DEFENDANT BEY: (Nodding head.)

02:43:27 23 THE COURT: And then we will pick one alternate, I
02:43:31 24 don't think we need two alternates for a trial of this
02:43:33 25 lengths.

02:43:34 1 We will pick one alternate, and they way we will do
02:43:35 2 that is, again, you will have one peremptory challenge and the
02:43:39 3 government will have one peremptory challenge, and then we
02:43:43 4 will have our 13 jurors.

02:43:44 5 12 regular, one alternate.

02:43:46 6 Any questions?

02:43:47 7 DEFENDANT BEY: No.

02:43:47 8 MR. HOTALING: Judge, just to make sure I am clear,
02:43:54 9 the questioning will be to the entire group as opposed to by
02:43:58 10 panel in the box?

02:44:00 11 THE COURT: That is correct. We will qualify the
02:44:03 12 entire pool.

02:44:04 13 MR. HOTALING: Okay.

02:44:04 14 THE COURT: I don't have anything else to show you,
02:44:07 15 unless you have seen it before --

02:44:09 16 Have you seen that computer system in the jury room
02:44:12 17 where they look at exhibits in electronic format?

02:44:18 18 DEFENDANT BEY: No.

02:44:18 19 THE COURT: The last trial did not involve that?

02:44:20 20 DEFENDANT BEY: No, it didn't.

02:44:21 21 THE COURT: We will do that in a moment, I will show
02:44:25 22 you, but we don't need to be on the record for that.

02:44:28 23 DEFENDANT BEY: Okay.

02:44:29 24 THE COURT: So in the jury room there is a computer
02:44:31 25 system that lets them look at exhibits on the screen, just

02:44:34 1 like this, and they look at the digital exhibits.

02:44:37 2 For you it is okay if you introduce paper exhibits,
02:44:40 3 we will give them paper copies, you don't have to worry about
02:44:45 4 putting electronic versions together. But the government will
02:44:49 5 be required to submit an electronic version. So I will show
02:44:57 6 you that when we are done.

02:44:57 7 Do you have anything you would like to ask questions
02:44:57 8 about?

02:45:00 9 Mr. Bey?

02:45:00 10 DEFENDANT BEY: No, Judge.

02:45:01 11 THE COURT: Okay.

02:45:02 12 Does the government?

02:45:03 13 MR. HOTALING: Judge, one thing.

02:45:04 14 The last time we were together we talked about
02:45:07 15 stipulations, and we provided a copy of a stipulation,
02:45:11 16 additional materials that we submitted to Mr. El Bey, and then
02:45:14 17 we did it again today.

02:45:18 18 Actually, I think given your ruling with regard to
02:45:20 19 the 902.11, and --

02:45:23 20 Do you have copy of those, Judge?

02:45:25 21 THE COURT: Yes.

02:45:25 22 MR. HOTALING: I think stipulation Number 1 is moot,
02:45:28 23 since exhibits 1 through 51 are essentially the business
02:45:34 24 records, both the IRS records, the bank records, as well as
02:45:41 25 the records connected with purchases of different cars.

02:45:48 1 So again, I think based on the ruling that Your Honor
02:45:52 2 has already entered, I think that this stipulation is moot,
02:45:55 3 but I again would proffer to Mr. El Bey stipulation Number 2,
02:46:01 4 which we actually had talked about and negotiated back and
02:46:06 5 forth over the last series of weeks, dealing essentially with
02:46:11 6 Mr. El Bey's name changes, various name changes, as well as
02:46:15 7 the fact that he received income through the Postal Service.
02:46:21 8 We modified that at Mr. El Bey's request.

02:46:24 9 So since we are all together, I thought if we could
02:46:27 10 get resolution on the stipulation that might be helpful.

02:46:30 11 THE COURT: Mr. Bey, it is up to you whether you want
02:46:34 12 to stipulate or not.

02:46:35 13 Are you okay with the stipulation now or?

02:46:37 14 DEFENDANT BEY: Well, you know what, Judge, I will
02:46:40 15 look over it, but I don't think my job has anything to do with
02:46:44 16 it. I don't want to bring the fact that I work for the post
02:46:46 17 office, that has anything to do with is this case, what they
02:46:50 18 want to bring it in.

02:46:51 19 I don't care about them using the names, I am not
02:46:54 20 running or hiding from anybody. I have nothing to hide.
02:46:58 21 Those were religious reasons. But I don't think bringing my
02:47:02 22 job into this makes a difference.

02:47:05 23 THE COURT: Are you concerned about it being the
02:47:07 24 Postal Service or any reference to your job?

02:47:10 25 DEFENDANT BEY: Well, I have 35 years at the Postal

02:47:13 1 Service, and I am concerned about that. It has nothing to do
02:47:16 2 with what we are here for, so I do not know why they are
02:47:21 3 bringing that in.

02:47:21 4 THE COURT: I thought you had wanted to introduce the
02:47:24 5 fact that you had income because you wanted to disconnect
02:47:29 6 the --

02:47:29 7 DEFENDANT BEY: I wanted to say that I have a job, I
02:47:33 8 didn't want everyone to know where I worked; that is not their
02:47:35 9 business. That I did have an income, I was gainfully
02:47:40 10 employed. I wasn't sticking up nobody or trying to steal
02:47:44 11 nothing from the government. My thing is, I don't want them
02:47:46 12 to think that I was just here trying to rob and steal from
02:47:48 13 someone, that is not what ever did in my life. I want them to
02:47:53 14 know that I had a job and that I was bringing in income, I was
02:47:57 15 working a productive -- just like anyone else. I wasn't
02:48:00 16 trying to steal anything or.

02:48:01 17 I don't want them to think -- what I am saying is
02:48:06 18 when you bring in the fact that I work for the Postal Service,
02:48:09 19 you know, I think it -- to me, it looks bad, you know. How do
02:48:16 20 people make -- I mean, like, that man had a decent income and
02:48:22 21 he is going out and -- that's irrelevant. I don't think it is
02:48:25 22 important.

02:48:25 23 THE COURT: It is up to you whether you want to
02:48:27 24 stipulate or not.

02:48:28 25 So if you don't want that last sentence in there,

02:48:31 1 then you --

02:48:31 2 DEFENDANT BEY: I don't want it in there.

02:48:33 3 MR. HOTALING: And Judge, the only reason we did it,
02:48:36 4 and again, I don't want to get into too much, but at the last
02:48:39 5 trial, in order to prove up -- because there was a relevance
02:48:42 6 in terms of establishing an income stream, that some of the
02:48:45 7 documents that we produced from the Postal Service indicated
02:48:49 8 that Mr. El Bey was on disability status. And there was some
02:48:53 9 concern about the fact that he was on disability getting in
02:48:57 10 front of the jury.

02:48:57 11 If he doesn't care about that and that is the way he
02:49:00 12 wants to do it, go that way, that is his decision.

02:49:04 13 We are trying to sanitize it in such a way to make it
02:49:07 14 completely fair to Mr. El Bey. That's our intention. If he
02:49:10 15 doesn't want it, fine.

02:49:12 16 DEFENDANT BEY: Where my income comes from, that is
02:49:15 17 no one's business, as long as it is legal, or lawful, I should
02:49:19 18 say.

02:49:21 19 And so everything I was doing was lawful, and I don't
02:49:24 20 think -- I don't think it is anyone's business as long as they
02:49:29 21 know I had an income lawfully coming in.

02:49:32 22 Do you know what I am saying?

02:49:36 23 THE COURT: Let me just first make sure I understand.
02:49:39 24 The government is intending to prove up that the defendant had
02:49:46 25 an income or not intending to prove that up?

02:49:49 1 MR. HOTALING: That he did have an income through the
02:49:53 2 Postal Service. And the documents that we have, and have
02:49:57 3 received through the course of the case, indicate that much of
02:50:00 4 that was because of a disability that Mr. El Bey was on.

02:50:04 5 THE COURT: But just -- imagine for a moment that
02:50:07 6 Mr. Bey is not going to introduce any evidence about his job.
02:50:13 7 Would you?

02:50:13 8 MR. HOTALING: I think so.

02:50:14 9 THE COURT: Okay.

02:50:18 10 And so the records that you would introduce refer to
02:50:25 11 his disability.

02:50:26 12 MR. HOTALING: Yes.

02:50:27 13 THE COURT: Okay.

02:50:31 14 DEFENDANT BEY: I don't even see why that is
02:50:34 15 relevant, Judge.

02:50:34 16 THE COURT: And they are not saying that the
02:50:36 17 disability part is relevant. But they are saying that they
02:50:39 18 want to prove up --

02:50:40 19 You want to prove up not just the fact of but the
02:50:44 20 amount of income?

02:50:45 21 MR. HOTALING: Yes.

02:50:46 22 THE COURT: That again is relevant to the financial
02:50:49 23 motive, Mr. Bey. So I think what they were trying to do with
02:50:52 24 this stipulation, and again, it's up to you, you don't have to
02:50:56 25 stipulate, is to refer to the fact that you did have income

02:51:01 1 through the U.S. Postal Service, but without mentioning the
02:51:05 2 disability part of it.

02:51:06 3 So if there is no stipulation on that --

02:51:11 4 DEFENDANT BEY: But the Postal Service is not paying
02:51:14 5 me my disability, that is what I am saying, it is not
02:51:17 6 relevant.

02:51:17 7 THE COURT: Well, the fact that you have some income
02:51:21 8 but not in the amounts of -- that would according to the
02:51:25 9 government support the purchases that were made after the
02:51:29 10 issuance of the refund checks, that is relevant.

02:51:33 11 DEFENDANT BEY: But --

02:51:34 12 THE COURT: Again, you don't have to -- if you don't
02:51:37 13 want to stipulate, then that's fine.

02:51:39 14 DEFENDANT BEY: Well, see, Judge, that is not true
02:51:41 15 though.

02:51:41 16 THE COURT: What is not true?

02:51:42 17 DEFENDANT BEY: What you just said about not getting
02:51:45 18 as much while I was on disability. That is not true.

02:51:48 19 THE COURT: And I -- I am not here to say whether it
02:51:51 20 is or isn't true.

02:51:52 21 DEFENDANT BEY: That is why I said it wasn't
02:51:55 22 relevant, because they really don't know. You know, getting
02:52:06 23 80 percent of your income and not having to put gas in and go
02:52:10 24 back and forth to work and lunch and all of that, everything
02:52:12 25 is --

02:52:13 1 Do you know what I am saying?

02:52:15 2 THE COURT: It will be up to the jury to decide
02:52:18 3 whether those amounts can support the purchases that were made
02:52:22 4 at or around the time of the issuance of the refund checks.
02:52:26 5 So I am not going to decide that other than to say that the
02:52:29 6 evidence is relevant.

02:52:31 7 The disability part of it, even the government is
02:52:34 8 saying that they don't have to prove that part up, and so you
02:52:39 9 should remove that from any exhibits.

02:52:41 10 MR. HOTALING: I will go through that.

02:52:43 11 THE COURT: So just remove the disability reference,
02:52:46 12 so that that doesn't enter into it.

02:52:50 13 But otherwise, it is relevant, so -- the fact of
02:52:52 14 income and the amount.

02:52:56 15 So it is all right to remove that from the
02:52:58 16 stipulation, okay, that is your choice, Mr. Bey.

02:53:01 17 So why don't you remove that from the stipulation,
02:53:04 18 and then if we are left with the name change part, if Mr. Bey
02:53:07 19 is comfortable with that, then maybe he can sign it today.

02:53:15 20 But again, that is up to you whether you want to sign
02:53:18 21 a stipulation.

02:53:19 22 So I think that concludes this part of it. If you
02:53:23 23 want to ask him to wait as you edit that and --

02:53:27 24 DEFENDANT BEY: I would rather go home and look at it
02:53:30 25 and see if everything is -- you know, the stipulation.

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THE COURT: That is your choice.

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DEFENDANT BEY: Yes.

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THE COURT: All right.

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We are concluded.

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(Proceedings concluded.)

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C E R T I F I C A T E

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I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

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/s/Krista Burgeson, CSR, RMR, CRR
Federal Official Court Reporter

January 21, 2019
Date

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